

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **September 24, 2002, Work Session**

AGENDA ITEM NO.: **9**

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **Regulation of Assemblies, Demonstrations and Parades on Public Property**

RECOMMENDATION: Adoption of the attached ordinance amending various sections of the City Code requiring a permit to conduct an Assembly, Demonstration or Parade on public property.

SUMMARY: For a number of years the City has had ordinances requiring citizens to obtain permits before holding assemblies, demonstrations or parades on public property. Earlier this year a citizen was charged with demonstrating without a permit in violation of the City Code. The General District Court convicted the citizen of violating the ordinance. However, the conviction was appealed to the Circuit Court and the Circuit Court found the City's ordinance to be unconstitutional. In light of the Circuit Court's decision the City's current ordinance is not being enforced. The Lynchburg Police Department believes the City needs to have any ordinance requiring permits for assemblies, demonstrations and parades. The Police Department needs to be aware of assemblies, demonstrations and parades that will involve significant numbers of people so it can plan for such activities and take the proper steps to protect the public safety and welfare. Accordingly, the City Attorney's Office and a local law firm with expertise in constitutional law reviewed the ordinance to try to determine how it could be revised to satisfy the Court. The Constitutional Law Section of the Virginia Beach City Attorney's Office also reviewed the ordinance. The City Attorney's Office considered all of the suggestions it received and revised the ordinance to try and strike the proper balance between ensuring the free and safe passage of pedestrians and vehicles on the public rights-of-way, providing for the safe and orderly use of other public areas and allowing citizens to exercise their First Amendment rights of speech and assembly. Among other things the revisions to the ordinance increase the number of persons needed for a permit from five to ten and make it clear that recreational activities and door-to-door advocacy are not covered by the requirement of a permit. The City Attorney's Office also wrote to the ACLU and asked for suggestions concerning possible revisions to the ordinance but did not receive a response to the request.

PRIOR ACTION(S): The sections of the City Code regulating Assemblies, Demonstrations and Parades were last amended by City Council on May 11, 1999

FISCAL IMPACT: None

CONTACT(S): Walter C. Erwin, 847-1310 Ext. 235

ATTACHMENT(S): An ordinance amending Sections 25-375, 25-375.1 and 25-375.4 of the City Code

REVIEWED BY: lkp

ORDINANCE

AN ORDINANCE TO AMEND AND REENACT SECTIONS 25-375, 25-375.1, 25-375.2, 25-375.4 AND 25-375.10 OF THE CODE OF THE CITY OF LYNCHBURG, 1981, THE AMENDED SECTIONS RELATING TO ASSEMBLIES, DEMONSTRATIONS AND PARADES WITHIN THE CITY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That Sections 25-375, 25-375.1, 25-375.2, 25-375.4 and 25-375.10 of the Code of the City of Lynchburg, 1981, be and the same are hereby amended and reenacted as follows:

ARTICLE X. ASSEMBLIES, DEMONSTRATIONS AND PARADES ~~AND PROCESSIONS~~

Sec. 25-375. Purpose.

Pursuant to the authority granted to the city by the Code of Virginia and its general police powers, the city does hereby adopt the following sections in order to provide for the public health, safety and general welfare in the city, to ensure the free and safe passage of pedestrians and vehicles on the public rights-of-way, and to ensure free, the safe and unimpaired use and enjoyment of public property in places open to the general public and safe access to public areas and otherwise to regulate and control the time, place and manner of activities that would otherwise threaten or impair the public health, safety, and welfare in the city, while also encouraging the exercise of the rights to free speech and assembly in the city.

Sec. 25-375.1. Definitions.

The following terms shall have the meanings set out herein:

(a) "Parade" means any march, ~~demonstration~~, procession or motorcade consisting of people ~~persons~~, animals, or vehicles, or a combination thereof upon the streets, sidewalks or other public ~~areas~~ property within the city with an intent or likely effect of attracting public attention that interferes with or has a tendency to interfere with the normal flow or regulation of pedestrian or vehicular traffic upon the streets, sidewalks, or other public property ~~grounds~~.

(b) "Public assembly" means any meeting, demonstration, picket line, rally or gathering of more than ~~ten (10)~~ five (5) people for a common purpose as a result of prior planning that interferes with or has a tendency to interfere with the normal flow or regulation of pedestrian or vehicular traffic upon the streets, sidewalks, or other public property within the city or that interferes with or has a tendency to interfere with the normal use of any public property in a place open to the general public ~~or occupies any public area in a place open to the general public~~.

(c) "Spontaneous event" shall mean an unplanned or unannounced coming together of people ~~persons~~, animals or vehicles in a parade or public assembly ~~gathering~~ which was not contemplated beforehand by any participant therein and which is caused by or in response to unforeseen circumstances or events occasioned by news or affairs first coming into public knowledge within three (3) days of such parade or public assembly.

Sec. 25-375.2. Permit required.

(a) It shall be unlawful for any person to conduct or participate in a ~~parade or~~ public assembly, demonstration or parade on the public streets, sidewalks, or other public ~~areas~~ property of the city in a place open to the general public for which a written permit has not been issued in accordance with the provisions of this article.

(b) The provisions of this permit shall not apply to:

(1) Spontaneous events;

- (2) Recreational activities, including jogging or walking, that do not require closing public streets or other public streets or other public rights-of-way and that do not interfere with or have a tendency to interfere with the normal use of any public property in a place open to the general public;
- (3) Door-to-door advocacy, including canvassing, pamphleteering, religious or political proselytizing and the distribution of written materials, and similar activities that do not interfere with or have a tendency to interfere with the free passage of pedestrians and vehicles on the public rights-of-way or the normal use of any public property in a place open to the general public.
- (4) Door-to-door sales of goods or services, and similar activities that do not interfere with or have a tendency to interfere with the free passage of pedestrians and vehicles on the public rights-of-way or the normal use of any public property in a place open to the general public; provided, however, that any persons or organizations engaging in such activities shall comply with any other applicable requirements of the city code.
- (3 5) Funeral processions;
- (4 6) Students going to and from school classes or participating in educational activities, provided that such conduct is under the immediate direction and supervision of the proper school authorities;
- (5 7) The United States army, navy, air force and coast guard, the military forces of the state and the police and fire divisions of the city;
- (6 8) A governmental agency/agencies acting within the scope of its functions;
- (9) Park and recreation areas that are regulated by the city's division of parks and recreation;
- (10) Areas at the Lynchburg Regional Airport that are regulated by the airport manager.
- (c) Permits may be granted if they are requested by individuals or organizations who desire to have a permit, even though the permit is not required under this section.
- Sec. 25-375.3. Application.
- (a) Any person desiring to conduct a parade or public assembly shall make written application to the chief of police, or his designee, at least five (5) days prior to such parade or public assembly. Such application shall set forth the following information:
- (1) The name, address and telephone number of the person requesting the permit;
 - (2) The name and address of any organization or group the applicant is representing;
 - (3) The name, address and telephone number of the person who will act as the parade or public assembly leader or chairman and who will be responsible for the conduct of the parade or public assembly;
 - (4) The type of public assembly, including a description of the activities planned during the event;
 - (5) The date and time (start and ending) of the parade or public assembly;
 - (6) If an assembly, the specific location or locations of the assembly;
 - (7) If a parade, the specific assembly and dispersal locations, the specific route, and the plans, if any, for assembly and dispersal;
 - (8) The approximate number of people who, and animals and vehicles which will constitute such parade or public assembly and the type of animals and a description of the vehicles;

(9) A statement as to whether the parade or public assembly will occupy all or only a portion of the width of the streets or sidewalks or other public rights-of-way proposed to be traversed or used;

(10) A description of any recording equipment, sound amplification equipment, banners, signs, or other attention-getting devices to be used in connection with the parade or public assembly; and

(11) Such other information as the chief of police, or his designee, may deem reasonably necessary in order to properly provide for traffic control, street and property maintenance, administrative arrangements, police and fire protection, and for the protection of public health, safety and welfare.

(b) The chief of police, or his designee, shall not issue the permit if any information supplied by the applicant is false or intentionally misleading.

(c) The chief of police, or his designee, shall have the authority to and shall make reasonable efforts to consider an application hereunder which is filed less than five (5) days before the date the parade or assembly is proposed to be conducted if, after due consideration of the date, time, place and nature of the parade or public assembly, the anticipated number of participants and the city services required in connection with the event, and where good cause is otherwise shown, the chief of police, or his designee determines that the waiver of the permit application deadline will not present an undue hazard to public safety.

Sec. 25-375.4. Issuance or denial of permit.

(a) The chief of police, or his designee, shall issue the permit within three (3) days of receipt of the completed application, and in any event prior to the scheduled parade or public assembly if the proposed parade or public assembly will not endanger the public health, welfare or safety, applying the following criteria and finding that:

(1) The time, duration, route and size of parade or assembly will not unreasonably interrupt the safe and orderly movement of vehicular or pedestrian traffic or the normal use of public property in a place open to the general public;

(2) The parade or assembly is not of such a nature that it will require diversion of so great a number of police and fire personnel to properly police the line of movement in the areas contiguous thereto so as to impair the normal protection of the remainder of the city;

(3) The applicant has, where appropriate, designated monitors sufficient to control the orderly conduct of the parade or assembly in conformity with such permit;

(4) The conduct of the parade or assembly will not unduly interfere with the proper fire and police protection of, or ambulance service to, the remainder of the city, or unreasonably disrupt other public services and protection normally provided to the city;

(5) The parade or assembly will not interfere with another parade or assembly for which a permit has been granted; and

(6) The parade or assembly proposed will not violate, and will conform with all applicable state regulations and laws governing the proposed event.

(b) For parades or public assemblies held on a regular or recurring basis at the same location, an application for an annual permit covering all such parades or assemblies during the calendar year may be filed with the chief of police, or his designee, at least five (5) and not more than sixty (60) days before the date and time at which the first such parade or public assembly is proposed to commence. The chief of police, or his designee, may and shall make reasonable efforts to waive the minimum five (5) day period after due consideration of the factors specified in subsection (c) in the previous section.

(c) If the chief of police, or his designee, denies an application, he shall promptly attempt to call and will promptly mail to the applicant a notice of his action, stating the reasons for his denial of the permit, and notifying the applicant of his right to appeal the denial pursuant to Section 25-375.9 of this article.

(d) If two or more applications are submitted requesting a permit under this article for a parade or assembly to be used at the same time and place, the application first filed shall be granted if it meets the requirements of this article;

(e) Nothing in this article shall permit the chief of police, or his designee, to deny a permit based upon political, social or religious grounds or reasons or based upon the content of the views expressed. Denial of a permit on such grounds is prohibited.

Sec. 25-375.5. Alternative permit.

The chief of police, or his designee, in denying a permit for a parade or public assembly shall be empowered to authorize the conduct of the parade or assembly on a date, at a time, at a place, or over a route different from that proposed by the applicant. An applicant desiring to accept an alternate permit shall file a written notice of acceptance with the chief of police, or his designee. An alternate permit shall conform to the requirements of and shall have the effect of a permit under this article.

Sec. 25-375.6. Notice to city and other officials.

Immediately upon the issuance of a permit, the chief of police, or his designee, shall send a copy thereof to the following:

- (a) The city manager;
- (b) The city attorney;
- (c) The fire chief; and
- (d) The director of the department of public works.

Sec. 25-375.7. Compliance with directions and conditions.

Every person to whom a permit is issued under this article shall substantially comply with all permit terms and conditions and with all applicable laws and ordinances. The parade or assembly chairman or other person heading or leading the parade or assembly shall carry the permit upon his person during the conduct of the parade or assembly, and show the permit when requested to do so.

Sec. 25-375.8. Revocation of permit.

The chief of police, or his designee, shall have the authority to revoke any permit issued pursuant to this article if any information supplied by the applicant is discovered to be false or intentionally misleading or if any term, condition, restriction or limitation of the permit has been substantially violated or if there is any continued violation of the terms, conditions, restrictions or limitations of the permit after the applicant or anyone acting in concert with him is notified of a violation of the permit by an appropriate law enforcement official.

Sec. 25-375.9. Appeal.

(a) Any person aggrieved by the refusal of the chief of police, or his designee, to grant a permit, or by the revocation of a permit after one has been issued, may but is not required to appeal the denial to the city manager, or his designee, by filing with the city manager's office, within five (5) working days after the date of denial or revocation, a written notice of the appeal setting for the grounds therefor. The city manager, or his designee, shall act upon the appeal within five (5) working days after its receipt.

(b) The decision of the chief of police or his designee or the city manager, or his designee, may be appealed to the circuit court of the City of Lynchburg, in accordance with the laws of the state.

(c) In any appeal under this section, the city shall have the burden of demonstrating that the denial of the permit was justified under Section 25-375.4 of this article.

(d) The city shall meet all deadlines set by the court and by applicable statutes and court rules, and shall otherwise seek to assure that the appeal, including any motion for preliminary relief, is decided as expeditiously as possible.

Sec. 25-375.10. Public conduct during parades, demonstrations and assemblies.

(a) Interference. No person shall unreasonably hamper, obstruct, impede or interfere with any parade, demonstration or assembly or with any person, vehicle or animal participating or used in a parade, demonstration or assembly for which a written permit has been issued in accordance with the provisions of this article.

(b) Driving through parades. No driver of a vehicle shall drive between the vehicles, persons or animals comprising a parade, demonstration or assembly or funeral procession except when otherwise directed by a police officer. This shall not apply to authorized emergency vehicles.

(c) Parking on parade, demonstration or assembly route. The chief of police, or his designee, shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along the public streets or public rights-of-way constituting a part of the route of a parade, demonstration or assembly. The chief of police, or his designee, shall post signs to such effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof. No person shall be liable for parking on a street unposted in violation of this article.

Sec. 25-375.11. Severability.

If any portion of this article is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this article and such invalid provisions or portions thereof shall be severable.

2. That this ordinance shall become effective upon its adoption.

Adopted:

Certified: _____
Clerk of Council

200L